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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,739	03/22/2004	David Elder	RP-002	2738
34253	7590	07/14/2004	EXAMINER	
TANGENT LAW GROUP 1201 PENNSYLVANIA AVE WASHINGTON, DC 20004				TIBBITS, PIA FLORENCE
		ART UNIT		PAPER NUMBER
		2838		

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/708,739	<b>Applicant(s)</b> ELDER ET AL.
	<b>Examiner</b> Pia F Tibbits	<b>Art Unit</b> 2838

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-62 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

This Office action is in answer to the phone call from Mr. Eric Weierstall of 7/8/2004.

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-29, drawn to a **multiple battery system selectively connecting load and/or sources (subcombination)** with plural indicators, classified in class 320, dig. 18.
  - II. Claims 30-46, drawn to a **combination network and multiple battery system selectively connecting load and/or sources (combination)**, classified in class 713, subclass 340.
  - III. Claims 47-57, drawn to a multiple battery system selectively connecting load and/or sources (subcombination), classified in class 307, subclass 29.
  - IV. Claims 58-62, drawn to a method of controlling a multiple battery system by determining a plural cell condition, classified in class 324, subclass 434.
2. The designs as grouped are distinct from each other since under the law a design patent covers only the invention disclosed as an entirety, and does not extend to patentably distinct segregable parts; the only way to protect such segregable parts is to apply for separate patents. See *Ex parte Sanford*, 1914 CD 69, 204 OG 1346 (Comm'r Pat.1914); and *Blumcraft of Pittsburgh v. Ladd*, 144 USPQ 562 (D.D.C. 1965). It is further noted that patentably distinct combination/subcombination subject matter must be supported by separate claims, whereas only a single claim is permissible in a design patent application. See *In re Rubinfield*, 270 F.2d 391, 123 USPQ 210 (CCPA 1959).

In this case, the inventions are distinct, each from the other because of the following reasons: inventions I, II, III, and IV are unrelated due to their different modes of operation, particularly since invention II is drawn to an combination/assembly, while inventions I and III are drawn to a multiple battery system, which is a component of the above mentioned assembly, and invention IV is drawn to a

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method of controlling a multiple battery system by determining a plural cell condition. Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the subcombination has separate utility such as powering a different electrical apparatus, for example an electric vehicle (35 U.S.C. 121).

3. Because these inventions are distinct for the reasons given above, and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. A reply to this requirement must include an election of a single group for prosecution on the merits, even if this requirement is traversed (37 CFR 1.143). Any reply that does not include an election of a single group will be held nonresponsive. Applicant is also requested to direct cancellation of all drawing figures and the corresponding descriptions, which are directed to the nonelected groups. Should applicant traverse this requirement on the grounds that the groups are not patentably distinct, applicant should present evidence or identify such evidence now of record showing the groups to be obvious variations of one another. If the groups are determined not to be patentably distinct and they remain in this application, any rejection of one group over the prior art will apply equally to all other groups ( See *Ex parte Appeal* No. 315-40, 152 USPQ 71 (Bd. App. 1965)). No argument asserting patentability based on the differences between the groups will be considered once the groups have been determined to comprise a single inventive concept. In view of the above requirement, action on the merits is deferred pending compliance with the requirement in accordance with *Ex parte Heckman*, 135 USPQ 229 (P.O. Super. Exam. 1960).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of

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inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Pia Tibbits whose telephone number is (571) 272-2086. If unavailable, contact the Supervisory Patent Examiner Mike Sherry whose telephone number is (571) 272-2084. The Technology Center Fax number is (703) 872-9306.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFT

Pia Tibbits

July 12, 2004

Primary Patent Examiner

A handwritten signature in black ink, appearing to read "Pia Tibbits". It is written in a cursive style with a large, open loop on the right side.